2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

837 Adultery, by the Mongol code and also by the Kazak code credited to the Khan
684 Tiavka,[55] was punishable by death. Zaleskie[57] describes the unpleasant fate of adulterers. Adultery, however, in later times, came to be considered largely in the light of an offense against property for which compensation might be offered if it were acceptable to the husband. A wife might leave her husband and live with her lover provided the latter paid a bride price to the husband.[58]

595 It is difficult to distinguish between marriage and concubinage. My informants knew that Mohammedan law permitted a man only four wives but thought that additional women living regularly with him would also be wives. If he had obtained them by paying kalym they certainly would be. Grodekov says that a man might have as many wives as he wished, but if he had more than four he was expected to maintain sex relations only with the last four in the order of their acquisition.[59]

834 Sexual hospitality seems to have been unknown as an accepted practice. Grodekov writes:[60]

> Although the custom of sexual hospitality exists . . . in Siberia, in the south there is little of it. In one issue of statistical materials for the Turkestan district there is mentioned a custom by which the guest might place his hands three times on the breasts of a sleeping girl and if she did not push him away this was taken to indicate her acquiescence. The bii Kanaev [one of Grodekov's informants] denied any such right of the guest, saying "Such a thing could not be and would not even be mentioned."

My informants were mildly shocked at the suggestion, but one of them said that although a man certainly would not offer his wife or daughter to an overnight guest, yet if the guest happened to find favor in the eyes of a daughter she might join him of her own accord after the parents were asleep.

MARRIAGE

584 First marriages were usually arranged by the parents of the parties concerned, who, especially the girls, had very little voice in the choice of their mate. Grodekov,[61] however, indicates that a girl might break off an engagement with a distasteful financé but if she " . . . has been engaged from four to eight years the engagement is considered a marriage and she may not break it off if the man is unwilling." Also the privilege of the girl to at least protest is indicated by the curious statement: "When the daughter of a rich man or of a butcher attains the age of ten, or of a poor man fifteen, then the adat [customary law] permits a declaration from her concerning a reluctance to marry the man chosen by her father." Grodekov explains the inclusion of the butcher's daughter by saying that " . . . the daughter of a rich man, who eats well, and of a butcher, who lives on meat, reach their

55. Riazanovskii, Customary Laws of the Mongol Tribes, 57.

[56] Levshin, *Description des hordes*, 399.

[57] *La Vie des steppes*, 33.

[58] Dingelstedt, *Le Droit coutumier*, 151.

[59] *Loc. cit.*

[60] *Kirgizy i Kara-kirgizy*, 93.

[61] *Idem*, 36.

atives of the deceased to marriage with the widow by stealth, begins to live maritally with her. Then the lawful husband does not wish to take her "because the hem of a stranger has touched her" (itegi tiibti), but /87/ he makes a complaint nevertheless and receives satisfaction in the form of a horse or a camel(1), and the people sanction

1. The new husband at first suggests little, for example, a horse. The lawful groom does not agree to this, threatening to kill. Then they propose more, a camel, etc., until the legal groom is satisfied (razy klady).

the arrangement which is made.

If the widow marries a stranger, with the agreement of the relatives of the deceased, her children, even those not yet born, remain in the house of the former husband (2) and the new husband

2. There are cases where all the children go with the mother.

pays the family of the deceased at least half a kalym, or else provides a girl.

If after the mourning period a kinsman of the groom does not appear to receive the yesir, the biis give the widow permission (achyk khat) to marry according to her choice. (3)

3. The law of 1867, in case of an unsatisfactory decision of a people's court on marital matters, let them turn to the uyezd chief with a complaint. Usually the Russian administration has permitted the widows to marry according to their choice. This type of decision, going contrary to custom, has given birth to disputes between the choice of the heart and the lawful groom.

When the widow has already had a wedding (nika) with an outsider without the permission of the husband's relatives, then the marriage is considered valid and only the question of the amount of compensation to the husband's relatives remains open. The lawful bridegroom, even though he does not receive a full kalym, has never gone away empty-handed (kuru kalmaydy) thus far.

A bii does not believe an accusation of marital infidelity without witnesses.

The lover, about whom there has been a complaint to the bii,

684 cannot get off with a declaration that the wife was yielded to him for money, etc., and he pays a fine. For abducting a wife without her consent the lover is beaten and required to pay from one to three toguz (tyuya bastagan toguz, at bastagan toguz, siir bastagan toguz). If the wife was abducted with her consent, they beat the lover and the wife, and in addition the lover pays from one to three toguz.

683 /88/ If a husband publicly raises a knife, ax or saber against
562 his wife, or wounds her with such weapons, an atton is awarded to
[584] the wife's relatives who make a complaint. A third case of such a complaint causes a divorce.

For threatening to kill the wife, her relatives do not take her away with them, but only threaten the husband saying: "If you kill her, then you will get it soundly" (ultirseng tubinde kurersen).

If a wife thrashes her husband, the husband or the husband's brother strips her naked, ties her and whips her. If she complained to the bii, he would sentence her to the same.

For mutilation, breaking an arm, blinding the eyes, etc., a husband pays less than the usual fine for these injuries. In demanding a fine, the wife's relatives express themselves thus: "You have mutilated our sister, and lowered her value" (aibdi kyldyng, karyndasymyzdy kem kyldyng, bakhasyn kettirding). For giving the wife a light wound on the head, or for a scar (bas yarylsa, tamga tusse), etc. there is no complaint.

When they find out about the husband's beating his wife, her relatives (turkun) appear before him with the words: "Surely she has been convicted of stealing or infidelity? (kolynan urlyk shykty ma, koynynan uinas shykty ma?). If you are dissatisfied with her a second time, give her to us (ekinchi yaman kurseng bizge ber); If you are not pleased with her, we are pleased with her (sen yaman kurseng de, biz yaman kurmeymiz). If she has fallen into error prove it to us through witnesses and cut off her head, and we will cut off her legs" (aybi bulsa, guva menen muynyna koy, basyn kis, biz ayagyn kiseyik). The husband answers: "I can beat her as much as I like, and if I beat her to death, I will pay wergeld." The relatives do not take the wife away, but they advise her to run away to them, which she later does. Then the husband, repenting of his anger and shamed by the people (yurt), goes after her, and promises by oath (kasam beredi) not to beat her or scold her. Her relatives agree to this with the words: "To return the wife the first time is the custom of the people (yurttyng resmi). But if you beat her again,

562 their guardian. Women are permitted to enter a complaint in court of
695 their rape. (1) In such a case the woman has the right to defend her

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1. When a woman declares that she has been raped, and this is based only on one such declaration, the people's court sentences the person accused by the woman to pay a material remuneration to the plaintiff.

interests personally before the court. The testimony of women has force only in affairs affecting them personally. In affairs of men, no interference of women is permitted. In the Kazalinsk uyezd, women are not even called to court in matters concerning men and kinsmen.

Women, for example, the wife who is the defendant, are called up for a brief examination, but if she denies her guilt, it is limited to that.

If the wife is in dispute with her husband, no credit is given to her testimony at all (the biis' books of the Perovsk uyezd).

[593] /95/ Wives use the seal of their husbands but not of their fathers, since, according to the explanation of bii Sagyndykov, a Kazakh woman who was bought for a kalym is without rights (ikhtiyri yok), like a slave (churi), like livestock (mal) or land property (mulyk yer).

A woman is not permitted to take an oath. (1) An oath is

1. According to Torgai, the women are allowed to take an oath by the Shariat. He transmits from the words of the elders that in an extreme case they dress the Kazakh woman in men's clothing. Perhaps this evidence is only an attempt to bring the customary law closer to the Shariat.

possible from the woman's side, i. e., from her commune, but this too is avoided. According to the Kirgiz Kurpetai Dauletkulov, it is impossible for a woman to take an oath, but her husband and his relatives can take it. Cases in which decisions were made on the basis of a woman's oath in the absence of male witnesses, are very rare. Bii Abdrakhman does not recall a case of murder, for example, which was committed by a woman, without male witnesses.

562 For a murder committed by a woman, wergeld is not changed.
681 For the murder of a woman, half a wergeld is sought. But for injury of a woman no less is sought than for injury of a man, and

Misdemeanors	Punishments and fines imposed for them			
	Sultan Daulet Bushaev, Perovsk uyezd.	Bii Kunkabai & Umurbek, Auliye-Ata uyezd.	The Kirgiz bii Kurpetai Dauletkulov.	Torgai.
/154/ Turning this behavior into a profession.	Order to husband or relatives for corporeal punishment and supervision.			
Adultery with a married woman, proven as only one visit of the lover.	Atton.	Not punished.	Not punished.	Formerly 1 nine (1)
1. Torgai says that he posed a question to the biis (Umurbek and others) of the Auliye-Ata uyezd: "You know better than I, tell me: khatynyng amining ayby bar ma?" They answered that no fine is imposed for adultery. He answered: "You have eaten dirt! In earlier times they imposed one nine."				
Adultery discovered in flagranti.	One nine.	Up to 1 nine	20-30 rubles.	
The same with a fight resulting in miscarriage.	Tyuya bastagan nine.		50-100 rubles. for miscarriage.	

(Table continues).

4:Grodekov--136 E-5 (ca 1885) 1889 RQ2 Kazak RQ2

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Misdemeanors	Punishments and fines imposed for them			
	Sultan Daulet Bushaev, Perovsk uyezd.	Bii Kunkabai & Umurbek, Auliy-Ata uyezd.	The Kirgiz bii Kurpetai Dauletkulov.	Torgai.
The same with a girl.	3 nines.	Kunakbai: the corruption of a girl with her consent even though she is betrothed, and regardless of age, is not punished.	There is binding, beating and 20-30 rubles are exacted.	From 1 to 3 nines. Formerly 3 nines.

Note. If the girl was betrothed the fine goes to the benefit of the groom. If the groom /155/ renounces the bride, the fine goes to her father, who gives the groom another bride. If the girl was not betrothed, the betrothal of the guilty man to her relieves him of the fine.

The rape of a woman in general depending on the circumstances of the case.	From 2 attons to atbastagan toguz.	From 1 atton to 1 nine.	From 5-30 rubles	If she is a girl, he must marry her.

(Table continues).

4:Grodekov--137 E-5 (ca 1885) 1889 RQ2 Kazak RQ2

Misdemeanors	Punishments and fines imposed for them			
	Sultan Daulet Bushaev, Perovsk uyezd.	Bii Kunkabai & Umurbek, Auliye-Ata uyezd.	The Kirgiz bii Kurpetai Dauletkulov.	Torgai.
Incest	Corporeal punishment and banishment from the village, after a public reprimand.		Death from the hands of all the people. No case had ever taken place.	
The same, by force.	The same, with humiliation.			
A sin of sodomy.	From 3-5 camels.		Not punished.	A coat and asking for forgiveness, with the slaughter of an animal.
/156/ Copulation with livestock.	Corporeal punishment and humiliation.	Not punished.	There are no male mules among the Kirgiz.	Not punished. No case of it had occurred.
Procuring.	Atton.		Not punished.	
Pimping of a mullah.	Forfeiture of clothes, all property, and banishment from the village.		The guilty man flees, abandoning everything.	

4:Grodekov--138 E-5 (ca 1885) 1889 RQ2 Kazak RQ2

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[681] very rarely, and when it is, it is the less expensive type. Finally, the simple toguz are more frequent than the double or triple varieties. They are being replaced now by other fines, even by the atton.

Among the Kirgiz the toguz was formerly sentenced as a fine for mutilation, etc., but now they fine only in money.

It is asserted (Sultan Daulet Bushaev) that it was possible earlier to impose a sentence for theft of up to three toguz, namely: for the theft of one sheep, koy bastagan toguz, buydak bastagan toguz and ulak bastigan toguz; for the theft of one cow, siir bastagan toguz, kunan ukuz bastagan toguz and tay ukuz bastagan toguz; for the theft of one horse, at bastagan toguz, bie bastagan toguz, and siir bastagan toguz; for the theft of one camel, tyuya bastagan toguz, at bastagan toguz and siir bastagan toguz.

[684] According to Torgai, the chief cases in which one can impose a fine of three toguz at once are the following: 1) the abduction of a girl, with or without violation. She is returned with three toguz, if her father is influential, otherwise with a smaller number of toguz. If she has a bridegroom he demands the same exaction from her father for her unchastity. However it is now very difficult to obtain even one toguz for the unchastity of a bride because the father invariably declares that the pregnancy of his daughter was caused by the groom himself. In the Kurama uyezd they have completely ceased to file such suits and they take the bride even with a child. 2) If they do not wish to impose wergeld for the loss of an eye, an arm, etc., since all wergelds, including partial ones for mutilation are apportioned among the khundas, just as they are divided among the khundas themselves, even if the guilty person is solvent, in this case they sentence to a fine of three toguz, for the toguz are apportioned in the community only after the guilty person is insolvent and are not apportioned from the community of the plaintiff.

The above mentioned fines in livestock can be translated /231/ into money. In the biis' books of the Perovsk uyezd, in order to be exact they often record with the fines decreed in livestock, their value in money, especially with the large fines. In the south they usually fine directly in money. This custom exists as well in the Kazalinsk uyezd, as is evident from the order for the revision of the Kazalinsk uyezd of 1886 (1), in which it is said that in the extra-

(1) Of May 28, 1886, No. 88.

ordinary sessions of this uyezd, the calculation of the wergelds are to be made in rubles, and not in livestock.

Among the Kirgiz, the defendant in such cases justifies himself with the words: "But did I pull the baby out of you?" However he pays for the miscarriage: 30-40 rubles for a fetus of 2 months, 40 rubles if it is 3-4 months old, 40-50 rubles if it is 5-6 months, 100 rubles if it is 7-8 or 9 months old. 681 682

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It is necessary to distinguish the corporal punishments administered by the elders in the village in private fashion, from the official ones, decreed by the biis, which are an innovation which has arisen to a slight degree in the steppe from the Kokand fortresses. Official corporal punishments are not practised now. In the Auliye-Ata uyezd the present biis do not remember an example, and only two instances can be found of it in the bii's books of the Perovsk uyezd. In one, there is a threat that in case the stealing is repeated it will be punished by the whip (durra). In the other, a fine is imposed on an inveterate thief, and in case he is insolvent - 25 strokes of the whip. In the opinion of Mikebai, this last judgment comprises an error: one of these punishments should have been determined categorically: either a fine, or blows with the whip. 681 627

Private corporal punishment does not excuse the culprit from paying a fine, but the official one does. According to Aleksandrov, /245/ a fine is substituted for corporal punishments only when the plaintiff expresses his consent.

In private corporal punishment, the number of blows of the whip (kamshi) or the stick (chibyk) are never counted, and the guilty person is beaten until he repents. But if he dies from the blows, wergeld is required for him. The biis do not accept complaints for private punishment for wrongs, for example, for adultery.

No one is exempt from corporal punishment if he is caught stealing, by position or by origin (white bone, elders, small children). They usually sympathize with the old persons and small children and spare them, but if they are bound up and beaten, they cannot complain to the bii because of blows which led to illnesse Women who are caught stealing are not bound or beaten. [685]

What we have called private corporal punishment can be called taking the law into one's own hands, when it is particularly cruel. This last concept does not exist among the Kazakhs or the Kirgiz. There are cases in which they cut off the nose or kill a person caught in adultery. (1) It is said that at one time, the murderer of the adulterer 681 627 684

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1. Among the Alagirtsy and Farsalag of the Vladikavkaz okrug, if a wife is caught with a lover, her husband cuts off her nose. Among the Kurtat and Tagaur peoples, the husband kills the adulterer who is caught (Adaty Kavkazskikh Gortsev /Customary Laws of the Caucasian Mountaineers/, Pt. II, pp. 41-44).

and his own wife did not pay wergeld, while the murderer only of the former did pay wergeld. Taking the law into one's own hands exists even now. According to Lt. Colonel Pankratov, there was such a case during his service in the Chimkent uyezd. They placed a thief who was bound, on burning coals, and he was roasted there until the cords were burned through. A. E. Aleksandrov reports from the Kazalinsk uyezd that an outlaw is bound with a lasso to the tail of a horse or a camel.

According to bii Sultan Kanaev, before the coming of the Russians, they exacted a punishment 80 to 90 blows of the lash (durra) for adultery of a bachelor with the wife of another, and if he died under them, wergeld was not demanded. But if he was married, both he and the other's wife were killed, or else they threw the latter into a sack with /246/ a cover, or thrashed her in the sack with their feet. If she did not die after that, she was freed.

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Mutilation by court order and execution were practised only by the Kokandians. They were subjected to being torn apart by horses, being hung from a gallows, (1) being stoned to death (sarsan, in place of the Persian sen_sar)

1. The informant had not heard of hanging two men from both sides of a camel, as it is stated in Makovetskii, I, p. 69.

of the Persian sengsar) - this last for incest and renouncing their religion(2)-

2. According to Staff Captain Grombchevskii, among the Kashgar Kirgiz the following types of tortures and lynchings exist: 1) they tie a cord around the head around the forehead, which they begin to tighten; 2) they bind the arms behind the back, and by twisting the rope draw the elbows and the shoulder bones together; 3) they throw the bound thief in front of the entrance to a sheep pen and let the sheep walk over him. The victim of this faints from pain.

and to being impaled on a stake (khada). (3)

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3. According to an eye-witness, the Kazakh Babaev, in the Kokand dominion, in Yany-Kurgan, the border point between Russia and the Kokand khanate, two Russian Kazakhs were impaled on a stake for some fault, in the following manner: they threw the criminal on the ground on his back. Then several men held him by the legs, while two thrust the sharpened end of a stake into him, 14 to 21 feet long and as thick as a man's arm. Then they lifted him into the air and fixed the stake in the ground. Some time later a Sart rode up and hit the two condemned men on the head with his Circassian saber. Both died during the night.

Among others, the following punishments existed earlier, according to the report of E. A. Aleksandrov: a) the guilty person was laid on the ground in the middle of the village with arms outstretched and face up, and his arms and legs were tied to stakes driven into the ground for that purpose, after which a herd of sheep was driven over him. The size of the herd depended on the degree of his fault. If the person subjected to such a punishment was crushed to death, his kinsmen received no wergeld. (4) b) Execution by cutting

4. According to the report of bii Sultan Kanaev, the driving of sheep over a criminal (ustinen koy aydaydy) happens only for theft from close relatives or adultery with close relatives, for example, persons of the same village.

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off the head with a Circassian saber. Such a punishment took place with the consent of the sultan, and after the judgment of the offense by elders at a general council "maslyagat" (abbreviated: mastat).

* * *

He who is guilty of lack of respect for the fundamentals of the structure of the life, the clan, the family, etc., is subjected to the punishment of shaming, /247/ called "visiting of the people" (el aylantyrmak). They tie the guilty person's hands behind his back, smear his face with soot, put a cord around his neck or a piece of old felt (kurum) and lead him on foot around the village. One man drags him from in front, and from behind a rider drives him and beats him (Perovsk, Kazalinsk and Auliye-Ata uyezds and among the Kirgiz).

681 In the Kazalinsk uyezd, the shaming in addition to this consists of the person who has suffered telling publicly of the crime of the guilty party.

Among the Kirgiz, the guilty person is led three times around the village, with an old felt on his neck, and he is beaten and forced to say: "I committed such and such an act (men falan ish kyldym), and this is the punishment for it (dzhazal)". After this they place him in a pit to rot (churib ulib kitedi). This punishment was practised under the Kokand serkers for: 1) robbery, discovered at the moment of commission, even though done for the first time; 2) adultery with another man's wife, under the same circumstances; 3) lack of decorum before superiors. For incest it was customary to stone people (tashbaran).

681 The punishment for an unrestrained passion for stealing was formerly to confiscate all the property (kanau, uruganau). The house 685 of such a thief (in the Auliye-Ata uyezd) was subjected to attack and looting (uyin chaub alyb malyn aldy), or he was given up to the Kokandians, who hung him. Now under such circumstances they establish a sentence to exile him in Siberia or to banish him (1) from

1. The ousted person, excluded from his family and clan and therefore deprived of the support and defense of his clan, is called abrek among the Cherkes. A murderer, for whom his clan did not pay the "blood price" was made abrek primarily. Among the Mongols, exiles who departed from their kinsmen's clan and confederation were called ölöt or sabsars (Adaty Kavkazskikh Gortsev, pp. 359-61).

his milieu, saying: "We have banished him from our midst, we will be ruined because of his stealing. Let no one defend him in court (ichimizden chykarduk, kyuymeymiz urlygina, dauyn ich kim sura-masun). After this the thief becomes homeless, and is not reckoned in any volost. (2)

2. Two decrees of banishment from the community are given in Supplement No. 7. 1/

681 /248/ The withdrawal of the parental blessing from children exists. This takes place in this manner: The palms of the hands are pressed together and then pulled apart from each other three times.

1/ [Not translated -- A]